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Jacob A. Appelsmith, Chief of the
9 *Bureau of Gambling Control*

10
11 BEFORE THE
12 CALIFORNIA GAMBLING CONTROL COMMISSION
13 STATE OF CALIFORNIA
14
15

16 In The Matter of the Statement of Issues
Against:

17 KEVIN FREELS AND NEW GAMING
18 SYSTEMS, INC.,

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20 Respondents.
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OAH Case No. 2009090804

BGC Case No. DGC015001

**STIPULATED SETTLEMENT,
DECISION AND ORDER**

1
Stipulated Settlement, Decision and Order (DGC015001)

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceeding that the following matters are true:

3 **PARTIES**

4 1. Jacob A. Appelsmith (Complainant) is the Chief of the Bureau of Gambling Control,
5 California Department of Justice (Bureau).¹ He brought this action solely in his official capacity
6 and is represented in this matter by T. Michelle Laird, Deputy Attorney General.

7 2. Kevin Freels and New Gaming Systems, Inc. (Respondents) are represented by
8 Attorney John P. Panneton, 845 University Ave., Sacramento, California, 95825, telephone (916)
9 921-9890.

10 3. Respondent Freels, principal owner and President of Respondent New Gaming
11 Systems, Inc., submitted an application for a finding of suitability as a Gaming Resource Supplier
12 to the Division of Gambling Control (now Bureau) on or about January 24, 2001.² Thereafter, the
13 Bureau recommended to the Gambling Control Commission (Commission) that Respondents'
14 application be denied. Respondents requested an evidentiary hearing before the Commission and,
15 on November 3, 2005, the matter was referred by the Commission to the Office of Administrative
16 Hearings for an evidentiary hearing before an Administrative Law Judge.

17 **JURISDICTION**

18 4. Statement of Issues No. DGC015001 was filed before the Commission on or about
19 June 28, 2007, and is currently pending against Respondents. The Statement of Issues and all
20 other statutorily required documents were properly served on Respondents on July 27, 2007.
21 Respondents timely filed a Notice of Defense contesting the allegations in the Statement of
22 Issues. A copy of Statement of Issues No. DGC015001 is attached as exhibit A and is
23 incorporated herein by reference.

24 5. The parties agree that the Commission has jurisdiction over this matter and has
25 authority to approve this Stipulated Settlement, Decision and Order (Stipulation).

26 ¹ Jacob A. Appelsmith is substituted as the Complainant for Robert F. Lytle, Jr., Director
27 of the former Division of Gambling Control.

28 ² All further references are to the Bureau, regardless of whether it was called the Bureau
or the Division during the relevant time.

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CONTINGENCY

6. This Stipulation is subject to final approval by the Commission. This Stipulation shall be submitted by the Bureau to the Commission for approval at a noticed Commission meeting. Respondents understand and agree that Respondents may not withdraw this agreement or seek to rescind this Stipulation prior to the time the Commission considers and acts upon it. If the Commission fails to adopt this Stipulation as its decision and order, this Stipulation shall be of no force or effect, except that Complainant and Respondents agree that this Stipulation shall be inadmissible in any legal action between the parties or for any purpose, and that the Commission shall not be disqualified from further action by having considered this matter.

7. If the Commission rejects this Stipulation as its decision and order, and no amended agreement or settlement is reached before two additional regularly noticed Commission meetings have concluded or sixty days have elapsed, whichever is later, the Bureau shall request the scheduling of a formal evidentiary hearing of Statement of Issues No. DGC015001 before an Administrative Law Judge from the Office of Administrative Hearings.

ADVISEMENT AND WAIVERS

8. Respondents have carefully read, discussed with counsel, and fully understand the allegations and Causes for Denial in Statement of Issues No. DGC015001. Respondents have also carefully read, discussed with counsel, and fully understand the effects of this Stipulation.

9. Respondents are fully aware of their legal rights in this matter, including the right to an administrative evidentiary hearing on the allegations and Causes for Denial in the Statement of Issues; the right to confront and cross-examine witnesses; the right to present evidence and to testify; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

10. Respondents, in consultation with their attorney, voluntarily, knowingly, and intelligently waive and give up each and every right set forth in paragraph 9, above, with respect to this matter, and give up any right to challenge by way of hearing the allegations and Causes for

1 Denial in Statement of Issues No. DGC015001, with respect to this matter, and to challenge or
2 collaterally attack the terms of this Stipulation.

3 11. Respondents agree that counsel for the Bureau and the staff of the Bureau may
4 communicate directly with Commission staff regarding this Stipulation, without notice to, or
5 participation by, Respondents or their counsel, prior to the Commission's consideration of this
6 Stipulation at a noticed Commission meeting, and that no such communications shall be deemed a
7 prohibited ex parte communication.

8 ADMISSIONS

9 12. The admissions made by Respondents herein are only for the purposes of this
10 proceeding, or any other proceedings in which the Bureau or the Commission is involved, and
11 shall not be admissible in any other criminal or civil proceeding. Respondents hereby make the
12 following admissions:

13 a. In 2005, Respondent Freels was convicted of misdemeanor trespass and vandalism
14 in connection with a domestic matter.

15 b. Between 1999 and 2004, the National Indian Gaming Commission (NIGC) issued
16 a single Notice of Violation each to the Choctaw Nation of Oklahoma, the Absentee Shawnee
17 Tribe of Oklahoma and the Coyote Valley Band of Pomo Indians of California for operating class
18 III gaming devices in the absence of a tribal-state compact. These Notices of Violation were
19 based, in part, on the operation of devices provided to those tribes by entities of which
20 Respondent Freels was a principal. Respondent Freels contends the devices provided to each of
21 the tribes were class II devices and the Bureau contends they were class III devices.

22 c. In 2001, Respondent Freels failed to include on the "business information" section
23 of his application for a finding of suitability submitted to the Bureau that he held a business
24 interest in Capital Sweepstakes, Inc.

25 d. In 2000, Respondent Freels failed to include on his vendor license application to
26 the Viejas Tribal Gaming Commission certain business relationships with other tribes and a 1994
27 civil action involving Respondents, as detailed on page 11, lines 11 through 24 of the Statement
28 of Issues.

1 c. In 1999, Respondent New Gaming Systems, Inc., an entity of which Respondent
2 Freels was a principal, supplied gambling devices and related services to the St. Regis Mohawk
3 Tribe of New York without first obtaining a valid registration from the New York State licensing
4 Board, as detailed on page 12, lines 3 through 13 of the Statement of Issues. Respondent Freels
5 contends a temporary registration had been issued before gambling devices were installed.

6 f. In 1999, Capital Sweepstakes, Inc., an entity in which Respondent Freels held a
7 business interest, possessed three telephone card sweepstakes devices, deemed unlawful by the
8 Bureau, and placed them in a California cardroom for use by the public.

9 g. In 1998, the NIGC issued a Notice of Violation to AKA Industries, an entity of
10 which Respondent Freels was a principal, for managing gaming operations on tribal lands without
11 NIGC approval. The Notice of Violation was resolved by confidential settlement agreement
12 between the NIGC and AKA Industries.

13 OTHER MATTERS

14 13. The parties understand and agree that facsimile copies of this Stipulated Settlement
15 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
16 effect as the originals.

17 ORDER

18 In consideration of the foregoing agreements, admissions and stipulations, the parties agree
19 that the Commission may issue and enter the following Order:

20 IT IS HEREBY ORDERED that Respondents will be issued a conditional finding of
21 suitability, beginning on the effective date of this Stipulation, Decision and Order and subject to
22 the following terms and conditions:

23 1. The conditional finding of suitability shall be effective for four (4) years, beginning
24 on the effective date of this Stipulation, and the terms and conditions herein shall be placed upon
25 the finding of suitability and any permit, license, approval or registration issued by the
26 Commission as a result.

27 2. Respondents may conduct business as a Gaming Resource Supplier in California but
28 their authority to sell, lease or otherwise engage in the offer for operation of gambling devices in

1 California is limited to business with the Chicken Ranch Rancheria of Me-Wuk Indians, pursuant
2 to the terms of that Tribe's class III gaming compact with the State of California (1999 Tribal-
3 State Compact).

4 3. Respondents' conditional finding of suitability shall be subject to renewal every two
5 (2) years from the effective date of this Stipulation, consistent with the biennial compliance
6 review required by the 1999 Tribal-State Compact.

7 4. Respondents shall report to the Bureau any and all allegations made by any tribal
8 gaming agency, tribal gaming operation or tribal gaming facility and by any state or federal
9 agency of any violation of laws, rules or regulations against Kevin Freels, New Gaming Systems,
10 Inc., or any entity of which Respondent Freels is a principal, occurring during the term of the
11 conditional finding of suitability, within ten (10) days of knowledge of any such allegation(s).

12 5. Respondents shall report to the Bureau any and all administrative, civil or criminal
13 proceedings filed by or against Kevin Freels, New Gaming Systems, Inc., or by or against any
14 entity of which Respondent Freels is a principal, occurring during the term of the conditional
15 finding of suitability, within ten (10) days of knowledge of any such proceeding(s).

16 6. Respondents shall engage an independent accountant licensed by the California Board
17 of Accountancy to review New Gaming Systems, Inc.'s annual financial statements in accordance
18 with standards for accounting and review services and to submit such annual reviews to the
19 Bureau within sixty (60) days of the end of New Gaming Systems, Inc.'s fiscal year for a period
20 of four (4) years from the effective date of this Stipulation.

21 7. Respondents shall submit New Gaming System, Inc.'s accounts payable journal to the
22 Bureau within sixty (60) days of the end of New Gaming Systems, Inc.'s fiscal year for a period
23 of four (4) years from the effective date of this Stipulation, which journal shall include a listing of
24 all entities with whom New Gaming Systems, Inc. has conducted any business.

25 8. If at any time during the four (4) year term of the conditional finding of suitability,
26 Respondents Freels or New Gaming Systems, Inc. violate the California Gambling Control Act,
27 the Bureau's or Commission's regulations, the 1999 Tribal-State Compact or the terms of this
28 Stipulation, as determined after a duly noticed hearing, Respondents' conditional finding of

1 suitability, and any permit, license, approval or registration issued as a result, shall be revoked.
2 Nothing herein shall have any impact upon the Bureau's or the Commission's discretion to pursue
3 disciplinary action against Respondents for violation(s) of the California Gambling Control Act,
4 the Bureau's or Commission's regulations, the 1999 Tribal-State Compact or this Stipulation
5 occurring during the term of Respondents' conditional finding of suitability, or impose upon the
6 Bureau or the Commission any obligation to pursue any such action. Nothing herein shall have
7 any impact upon the Bureau's or the Commission's discretion to pursue disciplinary action
8 against the conditional finding of suitability, and any permit, license, approval or registration
9 issued as a result, for any act or omission not specified in the Bureau's Vendor Background
10 Investigation Report dated December 31, 2004 (revised September 30, 2005), regardless of when
11 it occurred, or impose upon the Bureau or the Commission any obligation to pursue any such
12 action.

13 9. If no violations of the California Gambling Control Act, the Bureau's or
14 Commission's regulations, the 1999 Tribal-State Compact or the terms of this Stipulation occur
15 during the term of Respondents' conditional finding of suitability, as determined after a duly
16 noticed hearing, none of the facts alleged in the Statement of Issues or any admissions made
17 herein may be used by the Bureau to recommend denial of any subsequent application, including
18 any renewal application, submitted by Kevin Freels, New Gaming Systems, Inc. or by any entity
19 in which Respondent Freels is a principal, or to pursue disciplinary action against same.

20 10. If no violations of the California Gambling Control Act, the Bureau's or
21 Commission's regulations, the 1999 Tribal-State Compact or the terms of this Stipulation occur
22 during the term of Respondents' conditional finding of suitability, as determined after a duly
23 noticed hearing, the conditions imposed upon Respondents' finding of suitability, and any permit,
24 license, approval or registration issued as a result, will terminate. However, Respondents will
25 continue to be subject to any and all laws, rules and regulations applicable to any non-conditional
26 finding of suitability, permit, license, approval or registration.


27 11. Respondents will be responsible for paying costs incurred by the Bureau in the
28 amount of \$300,000. Half of these costs (\$150,000) will be due within ten (10) days of the

1 effective date of this Stipulation. The remaining half of these costs will be waived if no
2 violations of the California Gambling Control Act, the Bureau's or Commission's regulations, the
3 1999 Tribal-State Compact or the terms of this Stipulation occur during the term of Respondents'
4 conditional finding of suitability, as determined after a duly noticed hearing. If any such violation
5 is found, the previously waived portion of the fine will immediately be due and payable.

6 **ACCEPTANCE**

7 I have carefully read the above Stipulated Settlement, Decision and Order and have fully
8 discussed it with my attorney, John P. Panneton. I understand this Stipulation and the effect it
9 will have on the conditional finding of suitability and any permit, license, approval or registration
10 issued as a result. I enter into this Stipulation voluntarily, knowingly, and intelligently, and agree
11 to be bound by the Order of the Commission.

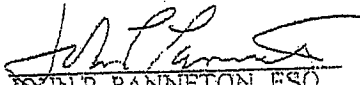
12 Dated: May 18, 2010

13 
14 **KEVIN FREELS**
15 For Himself Individually and as President of
16 New Gaming Systems, Inc., Respondents

17 **ENDORSEMENT**

18 I have read and fully discussed with Respondents the terms and conditions and other
19 matters contained in the above Stipulated Settlement, Decision and Order. I approve its form and
20 content.

21 Dated: May 18, 2010

22 
23 **JOHN P. PANNETON, ESQ.**
24 Attorney for Respondents

25 **COMPLAINANT'S ACCEPTANCE**

26 Dated: May __, 2010


27 **JACOB A. APPELSMITH, ESQ.**
28 Chief, Bureau of Gambling Control, Complainant

1 effective date of this Stipulation. The remaining half of these costs will be waived if no
2 violations of the California Gambling Control Act, the Bureau's or Commission's regulations, the
3 1999 Tribal-State Compact or the terms of this Stipulation occur during the term of Respondents'
4 conditional finding of suitability, as determined after a duly noticed hearing. If any such violation
5 is found, the previously waived portion of the fine will immediately be due and payable.

6 **ACCEPTANCE**

7 I have carefully read the above Stipulated Settlement, Decision and Order and have fully
8 discussed it with my attorney, John P. Panneton. I understand this Stipulation and the effect it
9 will have on the conditional finding of suitability and any permit, license, approval or registration
10 issued as a result. I enter into this Stipulation voluntarily, knowingly, and intelligently, and agree
11 to be bound by the Order of the Commission.

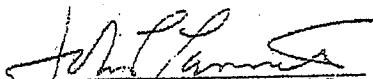
12 Dated: May 19, 2010

13 
14 **KEVIN FREELS**
15 For Himself Individually and as President of
16 New Gaming Systems, Inc., Respondents

16 **ENDORSEMENT**

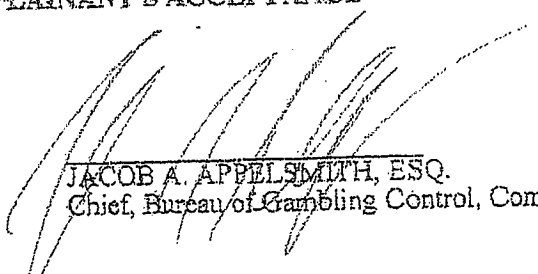
17 I have read and fully discussed with Respondents the terms and conditions and other
18 matters contained in the above Stipulated Settlement, Decision and Order. I approve its form and
19 content.

20 Dated: May 18, 2010

21 
22 **JOHN P. PANNETON, ESQ.**
23 Attorney for Respondents

23 **COMPLAINANT'S ACCEPTANCE**

24
25 Dated: May 25, 2010

26 
27 **JACOB A. APPELSMITH, ESQ.**
28 Chief, Bureau of Gambling Control, Complainant

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ENDORSEMENT

The foregoing Stipulated Settlement, Decision and Order is hereby respectfully submitted
for consideration by the California Gambling Control Commission.

Dated: May 19, 2010

EDMUND G. BROWN JR.
Attorney General of the State of California

By: T. Michelle Laird
T. MICHELLE LAIRD
Deputy Attorney General
Attorneys for Complainant

DECISION AND ORDER

The foregoing Stipulated Settlement of the parties "In the Matter of the Statement of Issues
Against Kevin Freels and New Gaming Systems, Inc.," Bureau of Gambling Control Case No.
DGC015001, OAH Case No. 2009090804, including all attached exhibits, is hereby adopted as
the final Decision and Order of the California Gambling Control Commission, and is effective on
the date of its execution by the Commission.

IT IS SO ORDERED.

Dated: _____, 2010

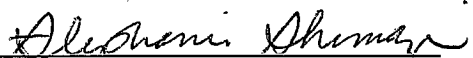
By: Dean Shelton
DEAN SHELTON, CHAIRMAN
California Gambling Control Commission


DECISION AND ORDER

DECISION AND ORDER OF THE COMMISSION:

The foregoing Stipulation has been adopted by a majority vote of the Commission as its final decision and order in this matter and is effective upon execution below by the Commission members.

IT IS SO ORDERED

Dated: 4-28-11 Signature: 
Stephanie Shimazu, Acting Chairperson

Dated: 4/28/2011 Signature: 
Tiffany E. Conklin, Commissioner

Dated: 4/28/2011 Signature: 
Lauren Hammond, Commissioner